

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OHIO
WESTERN DIVISION**

GRADUAL TAYLOR	:	Case No. 1:02CV446
Plaintiff,	:	Judge Weber
v.	:	DEFENDANT POLICE OFFICER
	:	CHERYL HART'S RULE 37 MOTION
CHERYL HART, et al.	:	TO DISMISS OR, IN THE ALTERNATIVE, FOR SANCTIONS AND EXPENSES

Defendant Police Officer Cheryl Hart moves the Court pursuant to Rule 37 F.R.Civ.P. for its order dismissing this action or, in the alternative, for sanctions and expenses. The reason for this motion is that the plaintiff has refused to respond to interrogatories and requests for production of documents served by Officer Hart on the plaintiff. The motion is supported by the accompanying affidavit of Sonya M. Walker, paralegal in the City of Cincinnati Law Department.

Rule 37 F.R.Civ.P. authorizes a party to move the Court for dismissal or an appropriate sanction if another party fails to respond to discovery requests. Officer Hart cannot properly defend herself in this action without the plaintiff's responses to her discovery requests. The plaintiff was arrested during a prostitution sting in which Officer Hart was the undercover police officer posing as the prostitute. On the one hand, the plaintiff appears *pro se*. On the other hand, Officer Hart is not taking advantage of the plaintiff's *pro se* status and the Walker affidavit attests to the efforts made to secure discovery responses. The Court has discretion to award appropriate sanctions up to and including dismissal and expenses. *Freeland, et al. v. Amigo*, 103 F.3d 1271, 1277 (6th Cir. 1997) ("The use of dismissal as a sanction for failing to comply with discovery has been upheld because it accomplishes the dual purpose of punishing the offending party and deterring similar litigants from misconduct in the future."). For good cause, Officer Hart requests that the Court exercise its discretion and either dismiss this action or order other appropriate sanctions and expenses.

Respectfully submitted,

JULIA L. McNEIL (0043535)
City Solicitor

/s/ Richard Ganulin

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For City of Cincinnati

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing Defendant Police Officer Cheryl Hart's Rule 37 Motion to Dismiss or, in the Alternative, for Sanctions and Expenses in this Case was filed electronically this 3rd day of August, 2006. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be certified mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Richard Ganulin

RICHARD GANULIN (0025642-C)

Assistant City Solicitor